Supreme Court, U.S.
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No. 05-

In The
Supreme Court of the United States

JACQUELINE RODRIGUEZ-JURATOVAC; LUIS OSCAR CASILLAS GONZALEZ; LUZ ROSARIO FEBLES; RUBEN GARCIA AYALA; PORFIRIO DE JESUS AGRONT; AND REQUEST TO BE CERTIFIED AS A CLASS ACTION.

Plaintiffs-Petitioners,

v

COMMONWEALTH OF PUERTO RICO; STATE ELECTORAL COMMISSION THROUGH ITS PRESIDENT; AURELIO GRACIA MORALES; THOMAS RIVERA SCHATZ, ESQ., ELECTORAL COMMISSIONER OF THE NPP; JUAN DALMAU, ESQ., ELECTORAL COMMISSIONER OF THE PIP; GERARDO CRUZ, ELECTORAL COMMISSIONER OF THE PPD

Defendants-Respondents,

On Petition for a Writ of Certiorari to the Supreme Court of Puerto Rico

PETITION FOR A WRIT OF CERTIORARI

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Tuesday, July 19th 2005

QUESTIONS PRESENTED

1. Whether the Puerto Rico Judicial and Administrative system erred for using the Latin-American ideological Anti-Americanism in refusing to apply the United States Constitution, Federal Laws and Jurisprudence for American Citizens in the Territory of Puerto Rico, in a voting rights case.

2. Whether the Puerto Rico Supreme Court erred in establishing post-election new standards in the determination of the validity of votes cast in a combined state and congressional election ballot contest that conflict with federal legislative enactments, the United States Constitution, and the "One man, one vote" doctrine, i.e.: by determining its validity based on "voter intent" instead of the question of whether the voters complied with the instructions given on the ballot.

3. Whether the Puerto Rico Supreme Court erred in refusing to allow an election results challenge to be heard on its merits, when it is based in part on electoral fraud, violations of federal laws, jurisprudence, established doctrines and considerations of constitutional nature, regarding the fundamental right to vote, in an election involving a ballot in which a congressional position is at stake, by stating that voters do not have the right, under state law, to challenge an election result.

4. Whether the Puerto Rico Supreme Court erred in allowing the imposition of attorney's fees in the amount of TEN THOUSAND DOLLARS ($10,000.00) in a case filed by bona fide voters challenging an election result, based on violations of their Constitutional right to vote through dilution.

PARTIES TO THE PROCEEDING

The following individuals and entities were parties to the proceeding in the court below:

Petitioners: Jacqueline Rodríguez-Juratovac, Luis Oscar Casillas-González, Luz Rosario-Febles, Rubén García-Ayala, Porfirio de Jesús-Agront and as Petitioners for a Class Action to all voters who voted for Pedro J. Rosselló-González for Governor in November 2nd 2000 in Puerto Rico..

Respondents: Commonwealth of Puerto Rico, State Electoral Commission, represented by its President, Aurelio Gracia; and Commissioners for: the Popular Democratic Party, Gerardo Cruz; New Progressive Party, Tomás Rivera-Schatz; Puerto Rican Independence, Party Juan Dalmau.

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OPINIONS BELOW

Review is sought of the April 22nd, 2005, decision issued by the Supreme Court of Puerto Rico, entered and notified on April 26th, 2005, not to review on Writ of Certiorari the Opinion and Judgment issued on March 16th, 2005, entered and notified on March 17th, 2005, by the Puerto Rico Appeals Court in the case of Rodríguez, et al, v. Comision, et al, KLCE2005-0126. The Appeals Court affirmed the Judgment issued by the Court of First Instance on January 31st, 2005, entered and notified in the case of Rodríguez, et al, v. Comision, et al, KPE2005-0051. The Supreme Court decision, titled Resolution, has not been reported or published. (Pet. App.#1)

JURISDICTION

The judgment of the Supreme Court of Puerto Rico in the case of Jacqueline Rodríguez Juratovac, et al., v. Commonwelth of Puerto Rico , et al., CT2005-0003, was entered on April 22nd, 2005, notified and filed on April 26th, 2005. The jurisdiction of this Court rests upon 28 U.S.C. §1258. Petitioners seek reversal of the Supreme Court of Puerto Rico's decision, which, as explained below, violates Article III, Section 2 of the United States Constitution, 3 U.S.C. §5, The Help America Vote Act, Act of Oct. 29th, 2002, P.L. 107-252, 42 U.S.C.S. §15301 et seq., Voting Rights Act 42 USCA §1973i ss; Civil Rights Act 42 USCA §1983; and the Fourteenth Amendment to the Constitution of the United States, and irreconcilably conflicts with this Court's decision in *Bush v. Gore, 531 U.S. 98 (2000).*

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article III, Section 2 of the United States Constitution, 3 U.S.C. §5, The Help America Vote Act, Act of Oct. 29th, 2002, P.L. 107-252, Sections 301(a)(1) and 302; 42 U.S.C.S. §15301 et seq., Voting Rights Act 42 USCA §1973i ss; Civil Rights Act 42 USCA §1983; and the Fourteenth Amendment

to t[illegible]onstitution of the United States.

STATEMENT OF THE CASE

This case presents important questions concerning the construction and enforcement of 42 U.S.C. sec. 1983. Section 1983 was one of the means whereby Congress exercised the power vested in it by sec. 5 of the Fourteenth Amendment to enforce the provisions of that Amendment. Allegation of facts constituting a deprivation under color of state authority of a right guaranteed by the Fourteenth Amendment satisfies to that extent the requirement of sec. 1983. Monroe v. Pape, 365 U.S. 167-171 (1961).

One of the aims of section 1983 was to provide a federal remedy **where the state remedy, though adequate in theory, was not available in practice.** It was not the unavailability of state remedies but the failure of certain States to enforce the laws with an equal hand that furnished the powerful momentum behind this "force bill." Littleton v. Berbling, 468 F.2d 389, 400 (7th Cir. 1972). There was, it was said, no quarrel with the state laws on the books. It was their lack of enforcement that was the nub of the difficulty. Monroe v. Pape, supra at pp. 174-177:

If the State Legislature passes a law discriminating against any portion of its citizens, or if it fails to enact provisions equally applicable to every class for the protection of their person and property, it will be admitted that the State does not afford the equal protection. **But if the statutes show no discrimination, yet in its judicial tribunals one class is unable to secure that enforcement of their rights and punishment for their infraction which is accorded to another, ... the State has not afforded to all its citizens the equal protection of the laws.** (emphasis added; footnote omitted)

In the instant case the Supreme Court of Puerto Rico: (1) accepted a writ for certification in a moot case and issued an advisory opinion, against settled doctrine; (2) deprived

members of the Court of meaningful opportunity to evaluate the case; (3) deprived the defendants of a meaningful opportunity to reply the petitioners' writ; (4) issued a decision notwithstanding a removal proceeding to Federal District Court had been already filed before it, and disputed Federal District Court's authority to evaluate the petition for removal; (5) did not entertain a writ for certification from a Superior Court's decision in a germane case, enforcing the prior decision as binding on the germane case, and recognizing standing solely to candidates and denying standing to voters, contradicting the Supreme Court's previous decision in the aforementioned moot case; and (6) "reaffirmed" its previous decision which had been determined null by the U. S. First Circuit Court of Appeals, instead of issuing or re-issuing it. "Seldom has an opinion of this Court rested so obviously upon nothing but the personal views of its Members." Atkins v. Virginia, 536 U.S. 304, 338 (2002) (Justice Scalia, with whom the Chief Justice and Justice Thomas joined, dissenting).

The problem with the lack of capacity of many judges in the local judicial system, stems from the fact that the main criteria for their selection, appointment, and confirmation by the Senate has been political affiliation, according to a consensus among Senate leaders of different political affiliations. See Magdalys Rodríguez, Desbalance en la Selección de Jueces *(Unbalance in the Selection of Judges), El Nuevo Día*, March 24, 2005, p. __. "The appointment rests on politics. For the majority in the Senate, the best judge is he (or she) who most ardently supports his cause in ideological or partisan terms, or the applicant who at some point in time has done something of the like", said [Popular Democratic Party Senator] Eudaldo Báez Galib, former Chairman of the Senate Appointments Committee." Id.

The Commonwealth's "judicial tribunals" and the four (4) majority members of its Supreme Court in particular, thus have shown a widespread resistance and hostility to Acts of

Congress and to the decisions of this Court in the area of voting rights, when such rights must be recognized in favor of voters of the New Progressive Party (NPP), which supports Puerto Rico becoming the 51st state of the Union. Those four (4) majority members of the Puerto Rico Supreme Court were appointed by Governors of the Popular Democratic Party (PDP) and confirmed by a Senate with practically uninterrupted PDP majorities during 36 years (1941-1977), and 16 more years after a brief dominance by the NPP in the legislature, taking advantage of Section 3 of Article 3 of the so-called Constitution enacted pursuant to Public Law No. 600, which empowers the Judicial branch to change the number of Supreme Court judges **"only by law upon request of the Supreme Court."**

Up to the election of the year 2004, the Commonwealth Senate has been controlled by the PDP during 52 of the last 64 years. It is of common knowledge in Puerto Rico that the PDP has become an ideologically *anti-American*, center-left leaning party, which opposes the admission of Puerto Rico to the Union, and considers the Commonwealth of Puerto Rico as a separate and distinct Nation from the United States of America, as the rest of Latin America does. The situation is analogous even though in a different context, to the situation suffered mostly in the southern states of the United States when the civil rights laws were enacted. See, again, Monroe v. Pape, supra at p. 177; Littleton v. Berbling, *supra* at n. 19; District of Columbia v. Carter, 409 U.S. 418, 427 (1973):

"Now, it is an effectual denial by a State of the equal protection of the laws when any class of officers charged under the laws with their administration permanently and as a rule refuse to extend that protection. If every sheriff in South Carolina refuses to serve a writ for a colored man and those sheriffs **are kept in office year after year by the people** of South Carolina, and no verdict against them for their failure of duty can be obtained before a South Carolina jury, **the State** of South Carolina, **through the class of**

officers who are its representatives to afford the equal protection of the laws to that class of citizens, has denied that protection. If the jurors of South Carolina **constantly and as a rule refuse to do justice between man and man where the rights of a particular class of its citizens are concerned, and that State affords by its legislation no remedy, that is as much a denial to that class of citizens of the equal protection of the laws as if the State itself put on its statute-book a statute enacting that no verdict should be rendered in the courts of that State in favor of this class of citizens."**(emphasis added)

The current context in which the Puerto Rico "judicial tribunals" have been revolving around during 65 years, reflects the *anti-Americanism* developed since the United States ceased to be a relatively small country, a little more than half the size of today's Argentina, made up of thirteen colonies located on the coastal Atlantic strip in the middle of North America. Its transformation into a colossal "sea to shining sea" realm, with territories in the Pacific, the Caribbean, and near the North Pole, according to a *progressive* reading of the facts, is explained by Latin American "thinkers" as follows: "whether by force or intimidation, stripped France of its immense Louisiana territory, declared the Monroe Doctrine in order to dominate the New World, wrenched away from Mexico half of its land, forced the Czar of Russia to sell Alaska, and attacked Spain in Cuba, Puerto Rico, and the Philippines with no other motive than to annex the remainder of the decadent Spanish empire, completely incapable of defending itself ... From this perspective, George Washington, Jefferson, Madison, Adams, and the rest of the country's founding fathers harbored imperialist intentions from the moment the republic was founded." Mendoza, Montaner and Alvaro Vargas Llosa, Guide to the Perfect Latin American Idiot, Madison Books, 1996, p. 129.

Such is the Puerto Rican version of what renowned

novelist and essayist Mario Vargas Llosa has called Latin America's current paradox: "that its governments are beginning to change, its economies are being reformed, and civil institutions being born or reborn. But its intellectual life continues to be largely stagnant, blind and deaf to the world's great historical changes, unchanging in its routines, myths, and conventions". See the *Foreword* to the Guide to the Perfect Latin American Idiot, *supra* at p. XVI:

The idiocy documented in these pages is of another kind. In fact, this idiocy exists not just in Latin America–it runs like quicksilver and spreads its roots everywhere. False, intentional, and chosen, it is consciously adopted because of intellectual laziness, ethical sluggishness, and social opportunism. **It is ideological and political but above all frivolous, because it reveals an abdication of the ability to think for oneself, to compare the words with the facts they claim to describe, to question the rhetoric that replaces thoughts.** This idiocy is devoted to the prevailing trend; always carried away by the popular tide, it worships stereotypes and is defined by clichés.

Here this idiocy appears, above all, as weakness and cowardice in the face of true reality and as **a neurotic propensity toward avoiding this reality by replacing it with a fictitious one.** It is no wonder that a continent with such tendencies embraced surrealism, the distorted beauty of dreamlike states and intuition, and distrust for the rational–a place where military satrapy and authoritarianism proliferated at the same time and attempts to establish a tradition of consensus and reciprocal concessions through tolerance and individual responsibility (these being the food of democracy) failed over and over again. **Both situations appear to be the consequence of the same cause: the profound inability to distinguish between the truth and falsehood, reality and fiction.**" *Id.* at pp. XIV-XV (emphasis added).

However, Puerto Rico federal district courts have